A PRACTICAL GUIDE

TO THE

LAW OF BILLS OF EXCHANGE

AND

PROMISSORY NOTES.

FOR THE USE OF

BANKERS, MERCHANTS, TRADERS,

AND OTHERS.

BY STEWART TOURNAY,

SOLICITOR.

LONDON:

GROOMBRIDGE AND SONS, PATERNOSTER ROW.

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Price Four Shillings.

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PREFACE.

The want of a *cheap practical Guide or Hand Book* to the Law of Bills of Exchange and Promissory Notes, which has been long felt by mercantile men and the public generally, first suggested to the Author the compilation of the following work. In offering it to the public, he feels called upon to make a few observations, not so much by way of apology as of explanation, for attempting to write upon a subject, the law of which has been already so ably expounded by such learned Writers, as the late Mr. Justice Bayley, the late Mr. Chitty, and Mr. Serjeant Byles, in their several very valuable and elaborate works; all of which, it is however, submitted, are

adapted more particularly for the use of the legal profession, and not of mercantile and general readers, for whom the following pages are more especially intended.

It is scarcely necessary for the Author to observe, that as the present work is offered to a different class of readers, so, it is not intended, or expected, that it will in any way compete with either of the works of those eminent writers; on the other hand, he has carefully consulted their pages, as the standard authorities upon the subject, and also Mr. Smith's valuable 'Compendium of Mercantile Law,' and he acknowledges, with thanks, having derived very considerable assistance therefrom.

In conclusion, the object of the writer has been to meet the existing want, by the production of á work of a concise, accurate, and

really practical nature, as free as possible from legal technicalities, easy of reference, and peculiarly adapted for the use, and at a price within the reach, of all persons engaged in mercantile and trading pursuits, as well as the public generally; and in this, he trusts, that he has not altogether failed.

58, *Cheapside, London,*
December 16, 1850.

CHAPTER I.

HISTORY OF BILLS OF EXCHANGE AND PROMISSORY NOTES.

Bills of Exchange are generally supposed to have been in use in this country about four centuries; their introduction is by some writers attributed to the Jews and Lombards, being used by them as a safe means of payment without an actual remittance; by other writers, their origin is attributed to different causes;—it seems not, however, improbable that a Bill of Exchange was *originally merely a letter or order* from a merchant in one country to another merchant his debtor, or about to become his debtor in another country, requesting and authorizing him to pay the debt to a third party, or the bearer of the letter. Sometimes the creditor might have purposely given his debtor upon whom he had drawn the order, a certain time for payment, to enable him to realize some adventure or sale of merchandize, probably that for which the debt was incurred; the person in whose favour the order was given might, with reference to transactions with other merchants, wish to be satisfied if the debt would be *punctually*

paid, and would therefore apply to the debtor for the purpose, who would satisfy him on the subject, or *accept* the order or letter. In other cases it might frequently happen that the merchant upon whom the order was drawn was not a debtor but only an agent, or correspondent of the party drawing it, having, or expecting to have, assets or monies in his hands arising from the sale of merchandize forwarded to him by the principal, in which case the same result, that is, the acceptance of the order would probably follow. It was afterwards probably found, that such a letter might be conveniently transferred from the merchant in whose favour it was given to another, instead of *cash;* hence, therefore, might have arisen the system of transfer and indorsement; the usage was also, no doubt, found to be a ready means of finally closing open accounts and transactions between merchants in distant places and preventing disputes, and therefore, on that account also soon became prevalent.

Promissory Notes may owe their origin from somewhat similar causes, and especially from being a simpler process by which the object of closing mercantile accounts could be accomplished.

Bills of exchange and promissory notes, particularly the former, are now in general and extensive use, not only in this country, but in every civilized quarter of the globe, the former being almost the only medium of payment now used for mercantile and trading purposes.

CHAPTER II.

THE NATURE OF BILLS OF EXCHANGE AND PROMISSORY NOTES.

1. *Bills of Exchange,* the history of which we have shortly noticed, derive their origin, effect, and peculiar properties from the usage and custom of merchants, certain Acts of Parliament, and the numerous decisions of the Courts of Law on the subject.

2. A bill of exchange may be defined as a written order or request, from A who is called

the *drawer*, to B who is called the *drawee*, requesting him to pay to C who is called the *payee*, the amount mentioned therein. In common speech such a bill is frequently called a draft, and is said to be *drawn* by A *upon* B in favour of C.

In some cases, the bill is drawn by A upon B, payable to A himself or to his order; in this case A represents both the *drawer* and *payee*.

A banker's cheque has many of the incidents of a bill of exchange, and to speak generally, the customer of the banker represents the drawer, the banker the drawee, and the bearer is in the position of the payee.

3. If the drawee undertakes to pay the bill, which he does by "*accepting*" it, he becomes and is called the *acceptor*. It is also generally made payable not only to the payee alone, but to the payee or *bearer*, or to the payee or *his order*. If made payable to the payee or bearer, the payee can *transfer* it by mere *delivery* to any other person, who as the holder stands on the same footing with respect to his rights against the drawer and acceptor as did the payee. (See also Transfer of Bills and Notes, chapter ix. sec. 5, page 40). If a bill be made payable to the payee or *his order*, it must be transferred by a *written order*, which is effected by the payee signing his name on the back, or *indorsing* it; the payee thereby becomes and is called the *indorser*, and the new holder the *indorsee*, who stands on the same footing as

did the payee, with the additional security or guarantee of the payee for the due payment of the amount.

4. The several parties to a bill of exchange are, therefore, the *drawer*, who is frequently also the *payee;* the *drawee* who generally becomes *acceptor;* the *payee*, who if he transfer the bill by indorsement becomes *indorser*, and the *indorsee* or holder entitled to receive the amount.

5. *Bills* are *inland* or *foreign; inland*, when drawn and payable in *England; foreign*, when both drawn and payable, or when drawn or payable *abroad*. A bill drawn in England and payable in Ireland or Scotland is a foreign bill, and so *vice versâ*. Bills both drawn and payable in Scotland are inland, and so with respect to Ireland. When a bill is drawn in one country and payable in another, it is in most respects governed (except as to stamps), by the laws of the country where it is *payable*, or where the remedy is sought.

All bills are *presumed*, in legal and other proceedings, to be *inland*, until the contrary is proved.

Foreign bills are generally drawn in sets of three parts. Each part is valid and payable upon so long only as the other parts remain unpaid; each part refers to the other part and contains a condition to that effect; the party who *bona fide*

first obtains a title to his part is entitled to the other parts.

6. A *promissory note*, sometimes called a *note of hand*, may be defined as a promise or undertaking by A to pay B the sum therein mentioned; although, like a bill derived from the custom of merchants, it owes its validity as a *negociable* instrument to a statute of Queen Anne.

A promissory note may be made by more than one person, and it is then either joint or joint and several, according to the form in which it is drawn.

7. The party making or signing the note is called the *maker*, and the party in whose favour it is made, the *payee*. It is usually made payable to the payee or *his order*, or to the payee or *bearer*; if to the payee or *bearer*, mere delivery of the note is a sufficient transfer; if to the payee or *his order*, an *indorsement* by the payee is necessary, as in the case of a bill; when indorsed it partakes of the character of a bill, as the indorsement amounts to a direction by the payee and indorser of the note to the maker to pay the *indorsee*, who then stands in a similar position to the *indorsee* of a bill; the *indorser* assuming a similar position to that of the *drawer*, the *maker* to that of the *acceptor*.

A bank note is similar to a simple promissory

note payable to bearer on demand; the banker being the maker, and the bearer the payee.

As the rules governing bills and notes are (with but few exceptions, some of which will be noticed as they arise) identical, it is necessary that the above observations as to the relative position of the parties to bills and notes respectively should be carefully borne in mind.

CHAPTER III.

THE GENERAL REQUISITES OF BILLS AND NOTES.

1. *As to form of Bills and Notes*
2. *In a* Bill *there must be a* direction *to pay.*
3. *In a* Note *a* promise *to pay.*
4. *A Bill or Note must be payable at all events.*
5. *Must be for the* payment only, *and not for payment and the doing of some other Act.*
6. *Must not be in the* alternative, *as to pay or do some other Act.*
7. *Must be for payment in* Specie.
8. *Must be of a* personal *character, and not for payment out of a particular Fund.*

1. *As to the form of these Instruments.*—We have given in Chapter V. the forms which it is *usual and advisable* to adopt, but no particular form is necessary, provided the instrument has the several requisites to make a valid bill or note; and if it be so ambiguous as to leave it doubtful for which of those instruments it is intended, it may be treated as either, but it must come within the description of one or the other of those instruments.

2. *In the case of a* BILL, *there must be an order, or demand, or direction from the drawer to the drawee, to pay the amount,* or words equivalent thereto, or which have that effect. A *bare request* or *authority* will not do; thus, the following:—"*Mr. L——, please to let the bearer have £ , and place it to my account; and you will oblige, yours, &c.,*" not purporting to be a *demand* or order made by the one party, as having a right to call upon the other to pay, but only that he would be *obliged* by his so doing, was held insufficient: but in a recent case, where the words "*credit in cash*" were used, it was held sufficient, they being equivalent to the word "*pay.*"

3. *In a* NOTE *there must be a promise by the maker to pay the sum,* or words which are equivalent thereto, or which have that effect; thus, "*I do acknowledge myself to be indebted to, &c., in, &c., to be* PAID ON DEMAND," was held a good note; the court considering the words "*to be paid on demand,*" equivalent to a *promise to pay.*

On the other hand, the following was decided *not* to be a *good note,* but merely an I.O.U., or evidence of a debt. "*I.O.U. £ , which I borrowed of Mrs. ——; and to pay £5 per cent. till paid. R. T.*"

In the absence of the necessary requisites, the instrument cannot be negotiable, either as a bill or note, although it may be good for something as between the immediate parties, and may amount,

either to an agreement, or undertaking or guarantee to pay, or may be evidence of the debt as a common I.O.U.

4. *A bill or note must be made payable at all events, and not dependent upon the happening of any particular contingency or event;* unless, indeed, that event be of notoriety, and respecting trade, and there is a *moral certainty* of its taking place: thus, a bill payable two months after a certain government ship was paid off, was considered a good bill, for such an event is notorious, and there would be a moral certainty of its happening: also, if the event named is *inevitable*, and must happen at one time or other, as if payable upon the death of a person named, but not if upon the marriage of a person, as the marriage may never happen.

5. *It must be for the payment of a sum of money only, and not the payment thereof and the doing also of some other act or service;* thus, an instrument undertaking to pay a certain sum and deliver up some goods, is not a good note, or to pay and to sign a deed.

6. *It must not be in the alternative, as to pay or do some other act.* For instance, a promise to pay or render a person to prison, or to pay if another person do not pay within a given time, is not a good note, the same being only an eventual pro-

mise. So a promise to pay on the death of another person, provided he leave the person making the promise sufficient assets; or if the party promising shall be otherwise able; the same depending merely upon contingencies. A note, however, merely *stating* that the maker *had deposited title deeds* with the payee as a collateral security, is good, but not so if it contain *an undertaking* to deposit the deeds or to execute a mortgage, or do any other additional act.

7. *It must be for payment of money* IN SPECIE, *not in anything which in itself may be only a security for money,* however valuable and certain the same may be in the opinion of mercantile men. Thus, if promising to pay in East India or bank stock, or railway stock or shares, or in any like manner.

8. *It must be of a* PERSONAL CHARACTER, *and certain, and not for payment out of a particular fund, or under particular circumstances.* Therefore in a bill an order to pay a sum of money out of certain rents or other monies coming into the hands of the drawee, will not do, as it may turn out that the party may not have the rent or money in his hands; but it is not so when *the fund* is already in the *hands* of the drawee; nor will the naming of the fund merely by way of direction to the drawee how to reimburse himself vitiate the bill.

Besides the foregoing, there are several other requisites as a *good consideration,* proper stamps, &c., which will be treated of in succeeding chapters.

CHAPTER IV.

GENERAL DIRECTIONS FOR DRAWING BILLS AND NOTES.

1. *The date.*
2. *Amount.*
3. *As to the time for payment.*
4. *As to the place for payment.*
5. *Name of payee.*
6. *As to words* "order" *or* "bearer."
7. *As to the words* "value received."
8. *Direction of.*
9. *Signature of maker or drawer.*
10. *Signature in case of a firm.*
11. *As to* Small *bills or notes.*

The following remarks should be carefully attended to in drawing or making bills or notes; although, as has been already observed, and will be seen in this and succeeding chapters, a departure will not in all cases vitiate the instrument. Care should also be taken that the instrument be drawn in a business-like manner, and so as not to admit of any interpolation or alteration in the amount or otherwise.

1. *A date* is usual and proper, and is generally inscribed at the top on the right-hand corner; the

omission will not, however, invalidate the instrument, which will then be taken to be dated on the day it was *made*; but it must not be post dated so as to be an evasion of the Stamp Act, or it cannot be received in evidence.

2. *The amount* must be named, and it is generally, for the sake of convenience, written in the left-hand corner, at the top or bottom, *in figures*, as well as in the body *in words*; but in case of a disparity between the two, the *words* are to be relied on in preference to the figures; in case also of a party drawing or signing a bill or note in blank, to be afterwards filled up, it is good, provided the stamp covers the amount.

3. *The time for payment* should be inserted thus: either on demand or a certain time after date, or at sight, or a certain time after sight. If no mention is made of the time for payment, it is payable on demand.

4. *The place for payment* is also frequently inserted, although not necessary, unless a particular place for payment is intended to be fixed.

5. *The name of the payee* should be inserted; in case, however, a blank is left for the insertion of the payee's name, it can be afterwards filled up by a *bonâ fide* holder.

6. The words "*order*" or "*bearer*" must be inserted in order that the instrument may be *negotiable*, that is, either the one or the other; if, however, omitted, the instrument will be good as between the *immediate* parties.

7. *The words* "VALUE RECEIVED" are generally inserted, but they are not essential, and the omission will not invalidate the instrument.

8. *The Direction.* It is proper to direct a bill to the *drawee* by name; but if left in blank, acceptance will cure the defect.

9. *The signature of the drawer of a bill, or maker of a note* must be affixed; this is properly done by signing the name at the foot, but in one case when affixed at the top; thus, "I, A. B." it was held sufficient; if the maker cannot sign his name, he should affix his mark thus ×; but in that case his mark should be attested by a witness, if not, collateral evidence which it may be difficult to obtain, will be necessary as to signature and the identity of the instrument.

10. In case of a firm, the name of the firm should be signed. When given by several persons not being partners, questions frequently arise as to whether they are liable jointly, or jointly and severally; forms in each case are hereafter given—a note beginning, "*I promise,*" but signed by

several parties, has been held a joint and several note.

11. *Lastly, as to* small *bills or notes.* By statute, any bill or note under 20*s.* is totally void; and all bills or notes above that sum, and less than £5, must bear date on or before the time of issue, be payable within twenty-one days after the date, *must not be payable to bearer on demand,* must have the name and place of abode of the payee, and the signature of the drawer or maker thereto, and to all indorsments thereon, and must be attested by one witness. The Act also restricts the negotiability after the time named for payment.

Forms of small bills and notes which are fixed by statute, are given in the fifth chapter, and must be strictly adhered to.

CHAPTER V.

FORMS OF BILLS AND NOTES.

1. *Inland bill payable to drawer's own order.*
2. *The like when a third party payee.*
3. *Inland bill at sight.*
4 & 5. *Promissory notes.*
6. *Joint promissory note.*
7. *Joint and several note*
8. *Promissory note under £5.*
9. *Bill of exchange ditto.*
10 to End. *Foreign bills of exchange.*

1. *Inland bill of exchange payable to drawer's own order on demand.*

£100.

10, Lombard-st., London, June 1st, 1848.

On demand pay to me or my order (or to bearer, as the case may be), one hundred pounds, value received.

THOS. KING.

Mr. Henry Goldsmith, 12 High-st., Liverpool.

[See below.]

2. *Inland bill payable to a third party on demand.*

£700.

5, Cornhill, London, March 3rd, 1848.

On demand pay to Mr. John Newell, or order, Seven hundred pounds, value received.

ARCHD. KENT.

To Mr. John Turner, 12, Liverpool-street, London.

The acceptance to be written across each Bill, thus:—"*Accepted, Henry Goldsmith.*"

Or thus:—"*Accepted, payable at, &c. H. Goldsmith.*"

3. *Inland bill payable at sight, &c.*

£100. 5*s.* 9*d.* Newcastle, March 2nd, 1848.

At sight (or at three days after sight, or three days after date, as the case may be), pay to Messrs. Jones & Co., or order, One hundred pounds five shillings and ninepence, value received.

WM. JAMES.

Mr. John F. Smith, 51, Tower-street, London.

4. *Promissory note on demand.*

London, July 19th, 1848.

On demand, I promise to pay to Mr. William Wild or order (or bearer, as the case may be), Ten pounds, value received.

£10. JAS. KEMP.

5. *Promissory note after date.*

Bath, August 6th, 1848.

Three months after date I promise to pay to you or your order Twenty pounds, value received.

£20. GEORGE TWINER.

To William Bond, Esq., Jermyn-street, London.

6. *Joint promissory note.*

London, May 2nd, 1848.

On demand (or three weeks after date, as the case may be), we promise to pay Mr. Julius Lang or bearer (or order, as the case may be), Five hundred pounds, value received.

£500. THOS. TEMPLE.

WM. MAJOR.

7. *Joint and several Promissory Note.*

Liverpool, 1st June, 1848.

On demand (or two months or six weeks after date), we jointly and severally promise to pay Mr. John Lane, or order (or bearer) Five hundred pounds, value received.

£500. THOMAS TEMPLE.
WILLIAM MAJOR.

8. *Promissory Note under £5 (under the Statute).*

£3 10*s*. London, December 14th, 1848.

Twenty-one days after date I promise to pay to Alfred Brown, of 20, Oxford-street, London, or his order, the sum of Three pounds ten shillings, for value received by JONATHAN ALLEN.

Witness, GEORGE COX.

Any Indorsement thereof must be in the following form.

18th December, 1849.
20, Oxford-street, London.

Pay the contents to James Brown of Worcester, or his order. ALFRED BROWN.

Witness, THOMAS JONES.

9. *Bill of Exchange under £5 (under the Statute).*

London, January 14th, 1849.

Twenty-one days after date pay to Alfred Boram of Coventry, or his order, the sum of Three pounds, value received, as advised by

GEORGE THOMPSON.

To Mr. James White, of 3, Brook-street, Sheffield.

Witness, JOHN BROWN.

Any Endorsement thereof must be in the following form.

18th January, 1848,
5, High-street, Coventry.

Pay the contents to Mr. George Graves, of Bank-street, Leeds, or his order.

ALFRED BORAM.

Witness, ALEXANDER SIMS.

10. *Foreign Bills of Exchange.*

£30. London, June 1st, 1848.

On demand (or at sight, or three days after sight, or thirteen days after date, or at usance, or at usances as the case may be), pay this my first bill of exchange, second and third of the same tenor and date not paid to Messrs. Serle and Sons, or order (or bearer,) Thirty pounds, value received.

MOCATTA YOUNG.

To Mr. Aaron Armstrong,
Merchant, Berlin.

11.

£100. Dantzig, June 7th, 1848.

On demand (or at sight, or at three days sight, or fifteen days after date, or at usances) pay this third bill of exchange (first and second of the same tenor and date not paid), to Johann Waldmann, or order, One hundred pounds, for value received in goods supplied to the ship "Europa."

AARON MULLER.

To Messrs. Green & Co.,
Ship Agents, London.

12.

£500. Elsinore, June 17th, 1848.

At sight (or on demand, or at three days sight, or at two usances, &c.), pay this my first bill of exchange (second and third of the same tenor and date not paid), to Messrs. Woolfe or bearer, Five hundred pounds, for goods supplied and repairs done to the ship "Brisk," and secured by a bottomry bond made at Cronstadt on the same ship.

PAUL ROWOSKY.

To Mr. John Davids,
10, Cornhill, London.

13.

London, December 19, 1848.

At sight (or at three days after sight, or at usance), pay to Messrs. Ganneron and Co., or order, Five thousand francs, value received of them, and place the same to my account.

PIERRE LAFITTE.

Messrs. Lafitte, Blount & Co.
Bankers, Paris.

14.

Leghorn, September 14, 1848.

At three usances pay this my first of exchange (second and third of the same tenor and date not paid) to Messrs. Fingi, merchants at Florence, or their procuration, One thousand pounds, and place the same to my account without further advice from

JAMES ARNOLD.

Thomas Vyse, Esq.,
10, Thames Street, London.

15.

Calcutta, May 16, 1848.

Two months after sight (or, &c.), pay to Messrs. Forbes and Co. or order, at their banking house in London, One thousand pounds sterling, at per £ sterling, value received.

HODGSON & Co.

To Messrs. Baring & Co.
London.

16. Lyons, June 10, 1838.

At usance pay to Samuel Edmonds Twenty pounds sterling, Paris exchange, value received.

JOHN FLYNN AND Co.

Messrs. Stuart, Montague & Co.,
London.

17. Vienna, October 5, 1848.

Pay to me or my order at Hamburgh, on December 10th, next, Seventy pounds for goods as per advice.

SIMON SIEGEL.

To John Astell, Esq.,
Broad-street, London.

CHAPTER VI.

STAMPING BILLS AND NOTES.

1. *Every inland bill or note* must be drawn upon the *proper stamp,* which must be *previously* impressed upon it, otherwise it is invalid and cannot be given in evidence, and a stamp although of adequate value of another denomination, such as a receipt stamp is bad; it is sufficient if the duty cover the amount payable, without calculating therein the interest reserved, whether reserved from the date, or even *prior* thereto.

2. Foreign bills and notes drawn abroad are not required to be stamped with an English stamp in order to give them effect in this country; and our Courts do not enquire whether they bear the stamp proper in the foreign country; this course is also adopted in other countries with respect to English stamps. The reader is referred to Ch. 2, s. 5, as to the difference between foreign and inland bills.

Bills, however, drawn in Scotland or Ireland, or the *Colonies*, must be stamped according to the Law of the place, or they cannot be given in evidence here; and although a bill purport to be made in a foreign country, still if it can be shewn that it was really made in one of the Colonies or in this country, it would be treated as an *inland* bill, and is void if unstamped.

3. The stamp duty is fixed by the 55 Geo. 3, c. 184, of which the following is a table or epitome.

Inland Bills and Notes.

	SHORT DATE. Not exceeding 2 months after Date, or 60 days after sight.	LONG DATE. Exceeding 2 months after Date, or 60 days after Sight.
If £2 and not exceeding £5 5s.	£0 1 0	£0 1 6
Above £5 5s. and not exceeding £20	0 1 6	0 2 0
„ 20 „ 30	0 2 0	0 2 6
„ 30 „ 50	0 2 6	0 3 6
„ 50 „ 100	0 3 6	0 4 6
„ 100 „ 200	0 4 6	0 5 0
„ 200 „ 300	0 5 0	0 6 0
„ 300 „ 500	0 6 0	0 8 6
„ 500 „ 1,000	0 8 6	0 12 6
„ 1,000 „ 2,000	0 12 6	0 15 0
„ 2,000 „ 3,000	0 15 0	1 5 0
„ 3,000 „	1 5 0	1 10 0

Foreign Bills of Exchange drawn in Sets.

For every Bill of each set, and not exceeding £100	£0 1 6
Above £100 and not exceeding £200	0 3 0
" 200 „ 500	0 4 0
„ 500 „ 1,000	0 5 0
„ 1,000 „ 2,000	0 7 6
„ 2,000 „ 3,000	0 10 0
„ 3,000	0 15 0

4. If a bill be payable two months after sight, a stamp will be required as if payable more than

sixty days after sight or two months after date, that is, as for a long date, inasmuch as the two months begin to run, not from the day of the date, but on the presentment for sight.

5. A note for the payment of any sum of money by instalments, or for the payment of several sums at different days or times, the whole of the money to be paid being definite and certain, requires the same duty as if payable in *less than two months after date* for a sum equal to the whole amount to be paid.

6. Cheques on bankers and bank notes, which, as before mentioned, have many of the incidents of bills of exchange and promissory notes, are by statute exempt from stamps, if drawn in all respects in conformity with the provisions of the several Acts upon the subject, viz., 9 Geo. 4, c. 49, s. 15; 3 & 4 Wm. 4, c. 98, and 7 & 8 Vic. c. 32.

CHAPTER VII.

THE CONSIDERATION FOR BILLS AND NOTES.

1. *There must be a good consideration*—that is, either a *valuable consideration* as a debt, or money, or goods; or a good *legal consideration,* as some benefit moving from the person to whom the security is given, in favor of the person giving it, or some detriment sustained by the party receiving the security, for the party giving it.

2. *The consideration must not be illegal, or for an illegal purpose,* either by statute or at common law; thus, by statute, all securities given for transactions arising out of *gaming, horse-racing, stock-jobbing, signing or not opposing a bankrupt's certificate,* are illegal; but an agreement not to

oppose a bankrupt's last examination is not illegal. Again, if the consideration *is usurious* under the old usury laws, as where more than £5 per cent. was given or reserved; or under the existing usury laws, when, provided the bill has more than *twelve months* to run, interest above £5 per cent. will invalidate it. If the consideration be for an illegal purpose at common law, as *compounding of felony*, or in *contravention of public policy*, or for *immoral purposes*, as future cohabitation, or in respect of transactions arising out of prostitution, or such like, the instrument is void.

3. *It must not be for a fraudulent consideration or where there is fraud in the transaction*, thus a bill obtained through fraudulent representations, for the purpose of getting it discounted, and without consideration and afterwards put into circulation, in which case, unless in the hands of a *bonâ fide* holder for value, it would be void. (See page 41.)

4. *A good consideration is, however, always presumed* in favor of the holder, until the contrary is

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Note.—A very large portion of the litigation which takes place upon the subject of Bills, arises out of acceptances fraudulently obtained without consideration from the unwary, for the pretended purpose of getting them discounted or obtaining money upon them; the reader should therefore be very cautious how he gives an acceptance under such circumstances, and lays himself open to be made the dupe of designing persons.

proved and a *prima facie* case is made out against him; a material distinction, however, arises whether the instrument be in the hand of a party standing in immediate position to the party entitled to take advantage of the failure of consideration, or of a remote party holding *bonâ fide* for value and without notice.

5. *Formerly,* in cases where the consideration was illegal by *statute,* the instrument was void, not only in the hands of the party tainted with the illegality, but even in the hands of a *bona fide* holder; but now, by the 5th and 6th Wm. 4, c. 41, it is declared that no bill or note shall be *absolutely void* on such grounds, but that it shall be *deemed or taken* to have been given for an illegal consideration, and the money paid to the holder of such bill or note is to be deemed to have been paid on account of the person to whom the same was originally given upon such illegal consideration, and shall be a debt due from such person to the person who paid such money, and recoverable accordingly.

6. As we have already observed, a good consideration is presumed until the contrary is proved; it is therefore, first, for the party sought to be charged to make out a *prima facie* case why he should not be charged, for instance, that he received no consideration, or that the instrument

was obtained by or through fraud, or that the consideration was illegal, and if such *prima facie* case cannot be rebutted, the security, if in the hands of an immediate holder from the party sought to be charged, is void. If, however, it be in the hands of an intermediate or remote party without notice, and he can shew that *he* is a *bonâ fide* holder for value, he will be entitled, as a general rule, to recover.

CHAPTER VIII.

PARTIES TO BILLS OR NOTES.

1. The person making the bill or note must be a competent party, capable of making a binding contract, and he must sign it himself or by *procuration,* as by his agent.

2. *If by procuration or an agent,* the agent must be authorized for that purpose, and if called for, the authority must be produced, but no particular description of authority or form of appointment is necessary; the agent must, however, either have authority to make the particular instrument, or to draw or accept bills generally, for a mere gene-

ral authority *to transact the business* of his principal for him, and to receive and discharge debts is not sufficient. Where, however, an agent or confidential clerk had been in the habit of accepting bills for his principal, who had recognized his so doing, authority would be implied. The party taking the bill should use due caution, and ascertain that the agent was properly authorized in the matter. An agent cannot delegate his authority to another, without authority for the purpose given when appointed.

The agent, on the other hand, must be careful to avoid making himself *personally* liable, by showing that he is acting as agent only for another; as expressed by Lord Ellenborough, he must show plainly on the face of the instrument, that he is "a mere scribe or agent;" and in one case, where an agent of a banker drew a bill in the usual form, in his own name, with the addition of the words, "which place to the account of the bank as advised," he was held personally liable. The more recent cases, however, considerably relax this rule, with respect to bank agents, and partners in a bank, signing for a firm.

The safest course to be adopted by the agent, in order to avoid personal responsibility, besides clearly showing that he signs as agent only, is to add the words "sans recours," or "without recourse to me."

3. *An Infant* cannot make a valid bill or note,

although he may give a bill for necessaries; neither will a promise to pay, made after he is of age, be binding, unless it be in writing, in pursuance of the statute of frauds; but a person accepting a bill after coming of age, *drawn* whilst he was an *infant*, is liable.

An infant holder of a bill may, however, sue upon it, and receive *payment* of the amount.

4. *A Lunatic* cannot make a good bill or note, but he will not be allowed, should he recover from his lunacy, to set up his own insanity as a defence, unless in case of fraud; so that a note given by a person when a lunatic, for necessaries, could upon his becoming *sane*, be recovered upon.

5. *A Married Woman* cannot be a party (except as a feme sole trader according to the custom of London), although she may be living apart from her husband with a separate allowance; but she may if acting as agent for her husband, as where a bill was accepted by drawer's wife in her own name, she having authority to accept for him, he was held liable as acceptor; and if a married woman draw a bill and the drawee accept it, it is good, for he thereby admits her ability to draw; she may also make herself liable as a feme sole when her husband is transported, or when he is an alien, or where he is abroad and has not been heard of for seven years.

6. *An Executor or Administrator* may be a party in that character, but he is *personally* liable unless he restricts his liability by stipulating to pay out of his testator's or intestate estate only; and that notwithstanding he expressly call himself and sign as *executor or administrator.*

Executors and administrators have respectively generally the same rights and liabilities as the *deceased* whom they represent with respect to presentment and notice of dishonor; and upon a holder of a bill dying, payment must of course be made to them.

It may be here observed, however unjust it may at first sight appear, that if the holder of a bill, or a creditor in any other character, make the debtor or party liable to pay, his executor, he thereby releases the debt.

7. *One Partner in a Trading or Mercantile firm* can bind the partnership concern by drawing or accepting bills in the name of the concern and make all the partners liable, provided the *purposes* of the firm require that it should deal on credit and issue negotiable instruments, but not otherwise; thus, in the case of attorneys, one partner cannot make his co-partner liable on a bill or note although for a debt of the firm, as such is not a trading partnership, and the purposes of it do not require that its members should deal on credit or issue negotiable instruments. Partners in farming and mining concerns have not *prima facie*

authority, but if the particular purposes of such a firm render it necessary or usual to deal on credit, an authority will be implied.

The Law presumes each partner in a trading concern authorized to do all that is necessary in the business and to bind his co-partners; and although, as between partners, a bill may have been issued in a fraudulent manner, and the proceeds applied for other than partnership purposes, or drawn in violation of the articles, it is still good in the hands of a *bonâ fide* and innocent holder who must not suffer by the fraud; any arrangement between partners being binding upon themselves only.

8. Although a *Dormant or Sleeping Partner* ought not to be a party to making a bill or note, nor a nominal partner without any interest in the firm, still a dormant partner and also a nominal partner, if he suffer himself to be held out to the world as a partner, may be liable on a bill given by himself or any of the other members. Upon a similar principle an old partner is liable until notice of the dissolution of the partnership shall have been properly given.

9. *The Notice of Dissolution of Partnership* is generally given in the *Gazette* and some other paper, but this is not a sufficient notice to a person having had dealings with the firm unless it is also shewn that he saw or was cognizant of the notice.

The safest and proper course, therefore, besides notice in the *Gazette* and papers, is to send circulars to every one having dealings with the firm.

10. *Corporations and public companies* or partnerships are affected as to making bills or notes, by laws peculiar to themselves; they are not *prima facie* authorized to issue negotiable instruments; their powers, rights, and liabilities, in this respect, must generally depend upon a variety of circumstances; a reference to the Act of Parliament or charter, and the general *constitution, object, and purposes* of each particular company is, therefore, the best and only safe means of testing its power.

It may, however, be taken as a general rule, that, in all cases of *trading* and the like, companies, where not otherwise provided, and where the object, purposes, and the constitution of the particular company render it necessary that it should deal on credit, the issue of negotiable instruments is warrantable.

It has, therefore, in accordance with the above rule, been held in the case of a particular *mining company*, where the usage and purposes rendered it necessary to deal on credit, that it might issue negotiable instruments.

11. In the case, however, of a company established for carrying on *public works*, it is other-

wise; thus, in a case before the Exchequer, in 1849, it was held that the directors of a *cemetery company*, although, by their act of incorporation, empowered to make *contracts and bargains* touching the undertaking, and to do and transact all other requisite matters and things, had no authority to accept bills for the purposes of the undertaking.

By the Act of 7 and 8 Vict., c. 86, which affects railway companies only, all railway companies are probibited from issuing any loan, note, or other negotiable instrument.

13. The Joint Stock Companies' Registration Act, 7 and 8 Vict., c. 110, which affects all joint stock companies and associations completely registered under it, points out the requisites for drawing or accepting bills or notes, *where the particular deed of settlement or bye laws of the company authorize their issue*, by requiring the signatures of two directors for and on behalf of the company, and the counter signature of the secretary or other appointed officer; and these requisites must be strictly adhered to.

14. The Companies' Clauses Consolidation Act, 8 Vict. c. 16, which is incorporated in the modern railway acts, and acts for public works, and some other purposes where the additional

capital to be borrowed is provided for specially, as on mortgages and bonds or debentures under the common seal, does not contemplate or provide for the issuing of bills or notes, but merely directs that all *contracts* which, as between private parties, would be by law required to be in writing, and signed by the party to be charged, shall be signed by two directors.

15. In all cases it should be shewn in a clear manner, that the parties signing intend to pledge only the company and not their own *personal* responsibility, or they may be personally liable; the following is a recent case upon the subject, which may appear at first sight to carry the question of personal responsibility to a great extent. A promissory note was in the following form: "On demand, we jointly and severally promise to pay A. B., or order, the sum of £250, value received. For and on behalf of the Wesleyan Newspaper Association, P. S., J. W., Directors." The Court held the defendants *personally liable*. It appeared that the Company was completely registered, but the deed of settlement was not put in.

16. The general rules as to BANKERS issuing bills and notes in that character, are governed by Act of Parliament, namely, the Act 3 & 4 Wm. 4, c. 98 (when the Bank Charter was renewed), regulating the Bank of England, and giving it the exclusive privilege of issuing bills or

notes within three miles of London, and at its Branch Banks; and the New Bank Charter Act (7 & 8 Vict. c. 32), regulating the issuing of bills or notes by other banking corporations or partnerships.

CHAPTER IX.

TRANSFER OF BILLS AND NOTES, AND RIGHTS AND LIABILITIES OF PARTIES THEREON.

1. The Transfer is the delivery or vesting of a bill or note, the property of one person, to and in another. It has been already observed, that a bill or note payable to the payee or *bearer*, may be transferred by mere *delivery*, but if payable to payee or *order*, the transfer from the payee must be by his *indorsement*.

2. The indorsement is sometimes what is termed in *full*, naming the party in whose favour it is made, but generally *in blank*, that is, the signature of the indorser only is used without naming the transferee, in which case the bill becomes payable to the holder, and transferable by delivery only. Indorsements are properly effected by the party indorsing or signing his name on the back, but signature upon any other part of the instrument shewing an intention to indorse, is sufficient; when the indorser cannot write his name, he should make his mark, which should be witnessed.

If the indorsement is what is termed *in full*, it may be thus:—"Pay to Mr. Charles Smith, or order: John Jones;" but the bill must then be indorsed over again by the person to whom it was indorsed, in order to make it again transferable by delivery; if indorsed in blank, it matters not through how many persons' hands it passes, without further indorsements.

3. A party may also indorse a bill for the mere purpose of transferring it to the indorsee, without himself incurring liability; this is effected by adding to the indorsement the words "sans recours," or "without recourse to me."

4. The Indorsee or holder of a bill transferable by *indorsement*, is entitled to look to the acceptor

for payment, and in case of non-payment by him when presented, then to the drawer and the last and all intermediate indorsers, or parties whose names are on the bill; the last indorser or any intermediate indorser, after payment as holder, is entitled to look to the acceptor and drawer, and all his preceding indorsers, to refund him; the drawer being entitled to look to the acceptor for payment. In the case of a note, the maker stands, as has been already observed, in the position of the acceptor.

5. The holder of a bill, in case of transfer by *delivery* only without indorsement, can only look to the acceptor, or, in case of non-payment by him, to the drawer, and does not, as a general rule, obtain any right upon the bill against the transferer or the parties through whose hands the bill has passed by mere delivery; but they may, of course, make themselves liable by their indorsement, and if it were given *in payment* of an existing debt, or for a consideration, or under circumstances which implied an intention that it was not to be considered as payment if dishonoured, they would still remain liable upon the original transaction, if the bill turned out of no value; the real distinction established by the cases appearing to be, that where such a bill is given *in payment* of an existing debt, the original debt revives if the bill turns out of no value; but, if given merely by way of *exchange*

for goods or for other bills and notes, or for money transferred at the same time, such a transaction is considered to be a *sale* of the bill, and the transferee takes it without the additional guarantee of the transferer; and there is no hardship in the case, as it would have been easy to have fixed the liability of the transferer by his indorsement, if it had been so intended by the parties.

6. In the case of a bill or note transferable by *delivery*, care should be taken in receiving or dealing with it, as it may turn out to have been obtained from the rightful owner through *fraud*, or may have been *found* or *stolen*; in which case the holder might have difficulties thrown in the way of his recovering; at one time it was considered that the party was compelled to use due and reasonable caution in taking the bill, and the question generally arose, what amounted to due caution; but the principle which now governs such cases turns upon the question as to whether or not the party had been guilty of "*gross negligence*."

7. The above principle was carried out in a recent case upon a bill, which as between the drawer and acceptor was an accommodation bill, and had been handed to a bill discounter to get discounted, but who had *fraudulently* and without authority sold it to a fourth party, for whom

a fifth party the holder discounted it. It was attempted to be shown for the defendant, not that there was fraud on the part of the plaintiff, but that he had not used *due caution* in taking the bill; the *circumstances* being such as ought to have excited the suspicions of a prudent man, according to the then generally received doctrine: the Court, however, overruled the old theory as to due caution, and held that the question for the jury to consider was, whether or not the plaintiff had been guilty of "*gross negligence*," in taking the bill under the particular circumstances, and the jury finding that he had not been guilty of gross negligence, he recovered the amount.

8. In the case of an instrument transferable by *indorsement*, as it is the indorsement which confers the title, the holder from a *thief or finder*, who may have forged an indorsement, can of course take no *legal* title, although the losing of the bill may have enabled the party to commit the forgery; but if the bill has, previous to its loss, been indorsed by the rightful owner, then a *bonâ fide* holder from a thief or finder can, if he himself be innocent of fraud, recover upon it.

A person, therefore, taking or dealing with a bill or note which has been lost or stolen, and the indorsement to which has been forged, does so (although unwittingly) in his own wrong, and

has no remedy, as against the rightful owner whose name has been forged.

A banker is of course liable, if he pay a check to which his customer's signature has been forged, he being bound to take care that he pays to his customer's order only; and it has been held, that a banker paying a bill payable to order accepted by his customer, but with the payee's name *forged* on the back, is liable to his customer, although the customer's signature be genuine.

9. The rules as to *crossed cheques* to some extent bear upon this subject; in writing the name of the payees' banker across the cheque, the intention is to direct the banker to pay only to the particular banker whose name was written across, the object being to prevent the payment to a wrongful holder in case of loss; it has, however, been held that the holder may erase the banker's name and substitute another; but, in such a case, it may be a question whether a banker would not be justified, and do right in refusing payment until proper inquiries could be made. Where the words "*and Co.*" are written across, the payee can fill in the name of his own bankers; but in case of loss, before doing so it would seem that, as the cheque is payable to payee or bearer, any holder becoming possessed of the cheque (although perhaps wrongfully) by filling in the name of his banker, might obtain payment, the effect of crossing a cheque in blank as "*and Co.*" merely

having the effect of making the payment to *some* banker or other necessary.

10. If a bill be actually lost, and not forthcoming within a reasonable time through any other party, the loser may in equity enforce payment on giving an indemnity, and by the Statute, 9 and 10 William III., c. 17, if any inland bill be lost, or miscarry within the time limited for the payment, the drawer shall, on security given to indemnify him, give another bill in its stead.

11. *The indorsement* may be made and the bill be negociated either before or after it becomes due, or before or after acceptance or refusal to accept; but a party taking a bill *after* it is overdue, or after notice of non-acceptance, though it is still negociable, takes it, it seems subject to any *equities or risks* upon it, as for instance, in a case of fraud.

12. After payment at maturity by the *acceptor*, a bill is not negociable or transferable; but payment by the drawer or indorser, does not release the acceptor, and a bill as laid down by Lord Ellenborough is negociable *ad infinitum* until it has been actually paid by him. So in like manner after payment of a *note* by the maker, it is not negociable, but payment by an indorser will not prevent its negociability.

13. A bill or note *under £5*, besides the several requisites before-mentioned, must *under the Statute* be indorsed before it becomes due, and the several requisites of the Statute as to the mode of indorsement, mentioned in the fourth chapter, must be also complied with.

14. Bills or notes being only assignable according to the custom of merchants, could not originally be taken in execution, but now by a recent Statute, money, bank-notes, cheques, bills of exchange, promissory notes, or other securites, may be taken in execution by the sheriff, who shall deliver the money and bank notes to the creditor, and retain the cheques, bills, &c., and sue upon them in his own name upon the creditor entering into a bond with two sureties for the costs of so doing.

15. In case of the death of the holder of a bill or note, it passes to his executor or administrator as his personal representative.

16. In case of the bankruptcy of the holder of a bill or note, it, as a general rule, vests in his assignees as from the date of the act of bankruptcy, and they must be the parties to indorse it; if a bankrupt before, but in anticipation of bankruptcy indorse a bill to a creditor by way of

fraudulent preference, the indorsement is void, and the bill will, notwithstanding, vest in the assignees.

The reader, is also referred, with reference to the subject of Transfer, to Chapter XIV., on *Payment.*

CHAPTER X.

PRESENTMENT OF BILLS FOR ACCEPTANCE.

1. *Presentment, what*
2. *How presented.*
3. *Must be within reasonable time.*
4. *Excuses for not presenting.*
5. *Must be made to Drawee.*
6. *If Drawee has absconded, what necessary.*
7. *If dead, to his representative.*
8. *If a Bankrupt, to his Assignees.*

1. Presentment for Acceptance is the exhibiting the bill to the drawee, and demanding of him to accept it, or make himself liable to the payment of the amount.

The holder of a bill must, if it is not already accepted, *present* it to the drawee or intended acceptor, for that purpose, and in case of default of acceptance, must give notice thereof to every party to whom he intends to look for payment, and who would be entitled to recover after paying it; thus, if in the hands of the first indorsee from the drawer, notice should be given to the drawer; if in the hands of a subsequent indorsee, notice should

be given to his immediate indorser, as also to the drawer and all the other indorsers, as explained at Chapter XIII.

Inland Bills are frequently accepted, at or about the same time they are drawn. Foreign Bills, drawn abroad, are often negotiated through several hands, before arrival and presentment for acceptance.

2. *The usual course of presentment for acceptance,* is to leave the bill with the drawee till the next day, and it must be accepted within twenty-four hours after being left, or it is dishonoured.

3. *The time for presentment* is not limited, but it must be within a reasonable time after coming to hand, at a seasonable hour of the day, and with bankers and merchants during and according to the usual hours and course of business; and the *notice of dishonour* for want of acceptance, must be given as soon as practicable after the dishonour.

4. There may, however, be causes to justify delay in presentment of a bill for acceptance, such as the illness of the holder, or other reasonable cause, so also, in the case of a foreign bill kept in circulation, a considerable delay will be excused: as a general rule, however, promptitude in presentment for acceptance, is the safest and proper course.

5. The presentment must be made to the drawee, and if required by the bill to be at a particular place, it must be presented there. If not presented to the acceptor in person, it must be at his residence or place of business.

If the drawee *has absconded* from the place at which the bill is made presentable, it may be treated as dishonoured; if, however, the drawee has only changed his residence, or if no particular place is named, the holder should use due diligence to find him.

7. If the drawee is dead, the holder should find out his executor or administrator, and present the bill to him for acceptance. If he accept it, he should do so in that character, and restrict his liability by stipulating, in his acceptance, to pay out of the deceased's estate only.

8. *If the drawee has become bankrupt,* presentment for acceptance should be made to his assignees.

The observations which follow in Chapter XII., as to presentment for payment, and in Chapter XIII., as to notice of dishonour, are in many respects, applicable to presentment for acceptance: the reader is therefore referred to those chapters.

Forms of notice of dishonour and protest for non-acceptance, are also given in Chapter XIII.

CHAPTER XI.

THE ACCEPTANCE.

1. *The Acceptance of a Bill,* is the engagement to pay it according to the terms thereof; *the making of a note* is equivalent or tantamount to the *accepting of a bill,* and although a note is generally perfect without any acceptance, still, if it be payable at a particular time after sight, presentment becomes necessary, in order to fix the period from which, time will commence running. Practically (as has been already said) with *inland bills* and in ordinary transactions, the acceptance is made, at or about the time of *drawing* the bill, and the consideration is then often given; in the case of a foreign bill, the acceptance is generally made upon the presentment for acceptance, which, as we have already observed, should be shortly after the bill comes to hand.

Forms of Acceptance will be found in Chapter V.

The Drawee of a bill is not liable until acceptance, but a banker having in his hands moneys of his customer, is an exception to this rule, for he is then bound to pay to his customer's orders, and is liable to the customer if he do not.

Sometimes the acceptance is general, without naming any particular place for payment; sometimes naming the acceptor's bankers or his place of business; and sometimes specially making the bill payable at a particular place, and not elsewhere (see pages 58 and 59).

2. *The Acceptor,* by his acceptance makes himself primarily liable for the payment when due; he also admits the ability of the drawer to make the bill, and his signature; and if the drawee turns out incapable of making a valid acceptance, as through infancy or otherwise, the bill may be treated as dishonoured.

3. The Acceptance of all *Inland* bills must be *in writing on the bill*; the Statute of 1 & 2 Geo. 4, c. 78, enacting, "That no acceptance of any *inland* bill of exchange shall be sufficient to charge any person, unless such acceptance be *in writing on such bill.*"

4. Acceptance may be complete without any *words* of acceptance; *the acceptor's name* only, written across the bill with an intention to accept, having been held to amount to an acceptance.

So, without any *name* or signature, any word or direction written on it, amounting or equivalent to an acceptance, and showing the intention to accept, is sufficient—such as "presented," "accepted," "seen," &c., the Courts giving considerable latitude in such cases; the Act merely declaring that the acceptance shall be *in writing*.

5. The acceptance is generally made after the bill is drawn; but it may be made before, on blank paper, and will be good to the extent of the stamp; so, if made after the time for payment has elapsed, when it will amount to an undertaking to pay *on demand*.

6. The statute above cited, not applying to *foreign bills*, much more latitude is allowed in the acceptance of them; thus it may either be *verbal or in writing*, and a mere *promise*, verbal or written, to accept, and an act or expression indicative of an intention to pay, has been held to amount to an acceptance. In these cases, the question of fact, as to whether the act amounts to an acceptance, is for the jury; therefore a mere verbal promise or undertaking "that the bill shall meet with due honour," or "shall be paid," is a valid acceptance; and where certain merchants at Geneva, in pursuance of directions from a merchant in England, purchased corn for his account, and drew bills for the amount upon his bankers in England, and informed him that

they had done so, and he wrote promising to accept a bill for the amount, it was held sufficient.

7. Sometimes *a qualified or conditional acceptance* is given; but the holder may refuse to take any other, than an absolute and unconditional one. If, however, the drawee decline to give such, and offers a qualified or conditional acceptance, either as to the amount, time, or condition of payment, the holder may take or refuse the same as he thinks proper. In case he refuses, then the bill should be treated as dishonoured, and notice of dishonour, given in the usual way to the necessary parties; if he take the qualified acceptance, he must give them notice of the nature of it.

8. The holder can refuse to take the acceptance of any other person, than the drawee or person named in the bill; but it will sometimes happen, that a *stranger* or no party to it, in order to promote its negotiability, or to save the credit of the drawer or of some of the indorsers, and to avoid expense, when the drawee declines to accept, will himself accept, which is called an *acceptance supra protest for honour*; that is, a conditional undertaking to pay if the drawee do not; in order, therefore, to fix the liability of an acceptor for honour, another presentment to the drawee is necessary when the bill arrives at maturity.

The acceptor for honour is entitled after payment, to recover against the drawer or the party

for whose honour he accepts, and any other persons to whom, such party might have had recourse.

The reader is also referred to the preceding Chapter, "*Presentment for Acceptance*" on this subject.

CHAPTER XII.

PRESENTMENT FOR PAYMENT.

1. *Presentment for Payment,* is the production or presentment of the instrument to the acceptor or maker, as the party primarily liable; and demanding the payment. If a note, presentment must be to the maker; if a bill, to the acceptor; in case of non-payment, notice of dishonour must, as explained in the next chapter, be

given to all parties, who would be entitled to recover payment after paying it, and against whom the holder intends to have recourse, or they will be discharged. Presentment is necessary, whether the bill has been already accepted or not, or even when it has not been presented for acceptance.

2. *If the acceptor or maker be dead,* presentment should be made to his personal representatives, and also at his late residence and place of business; and if payable at a particular place, presentment must be made there also.

3. *In case of the bankruptcy* of the acceptor or maker, presentment should nevertheless be made to him, and also to his assignees; and if a particular place be named, presentment should be made there also.

In case of the bankruptcy of the holder, the official assignee makes the presentment for payment, and in case of dishonour, gives notice to the proper parties.

4. *If the acceptance is general, or no particular place* for payment is named, presentment must be made either personally to the party liable, or at his usual place of business or residence, or to his wife, clerk, servant, or other person there, for he ought to provide for the payment in his absence; but if the house be shut up, or he has removed, reasonable inquiries should be made to find him.

5. *When no place for payment is named,* presentment, by becoming impossible or useless through the act of the party liable, may, it is said, become unnecessary and be excused; as where a defendant told the plaintiff, before the bill became due, that he could not pay it, and requested not to be put to the expense of the postage; but the soundness of this doctrine is very questionable, and it must be evident, that it is dangerous to rely upon such an excuse; and therefore presentment should not be omitted.

6. *When a particular place for payment* is named, presentment must be made *there,* instead of to the party, and his absconding, stopping payment, or insolvency, is no excuse, and if the house be shut up, or he has removed, presentment should be made at the door. In one case, where a note was made payable at a particular place, and the defendant, besides having become insolvent, had also made a verbal declaration, that none of his notes would ever be paid, it was held that it was no excuse for not presenting the note at the place named; but it is otherwise in the case of a *bank* which has closed, and notoriously stopped payment.

7. Bills held by one banker in London, and payable through another, are, by custom, presented at the *Clearing House.*

8. The Act of 1 and 2 Geo. IV. c. 78, enacts, That a *Bill accepted,* payable at the house of a banker, or other place, without further expression, such as "*not otherwise,*" or "*not elsewhere,*" so as to qualify the acceptance, is a *general* acceptance, and does not render presentment at that particular banker's or place imperative; so that presentment personally to the party chargeable, or at his house, will do; but it is nevertheless advisable to present it at the banker's, and particular cases may occur, in which presentment at the banker's would be deemed imperative; and if made payable at a banker's or other place *only, or not otherwise, or elsewhere,* it is a qualified acceptance and presentment must be made *there.* As the statute does not refer to bills *drawn* payable at a particular place, in all such cases presentment at the place named by the drawer must be made.

9. The Act does not, however, it must be borne in mind, apply to *Notes,* they *must,* therefore, in all cases be *presented at the place named therein,* whether a banker's or not; where, however, the words "at Messrs. W. & P." were written not in the body of the note but under the signature of the maker, they were held, to amount to a memorandum only, and not intended as the place of payment.

10. *The presentment must be made at a rea-*

sonable hour, and if at a banker's, during the hours and according to the course of business. Thus, twelve o'clock at night would in any case be held unreasonable; but eight o'clock, if the party had not retired to rest, or a still later hour, might be reasonable under the particular circumstances.

11. If a bill or note is *payable at a certain time* named, presentment for payment must be made *on the day of its becoming due,* or the drawer and indorsers, if a bill, (but not the acceptor); and the indorsers, if a note, will be discharged.

12. *If payable on demand,* or if no time for payment be named, which is equivalent, presentment must be made within a *reasonable time* after receipt of the instrument; thus, if payable at a banker's at the town where the party received it, presentment at any time during banking hours on the day or day after it is received, will do. If payable elsewhere, the instrument can be forwarded *by the post the day or day after* it is received, and the person to whom it is forwarded, has till the next day to present it.

Any improper delay may, however, discharge the drawer, in the event of the bankers or other persons upon whom it is drawn, having had funds of his in their hands at the proper time for presentment, and having failed or stopped payment in the interim; it appears, how-

ever, that a reasonable delay, may be excused, where the holder has put the bill in circulation, but the party still runs the risk of the bankers, or other persons, having parted with the funds in the meantime.

13. If payable *at or after sight*, a greater latitude is allowed, particularly in the case of foreign bills put into circulation by the holder; but a reasonable time only should be taken, as in the meantime the funds may have been parted with.

14. A banker's cheque, which is somewhat similar to a bill, should be presented, where the payee resides in the same town as the bankers, on the day or the day after it is received, or the drawer will be discharged in case the bankers fail with effects in their hands; if the holder do not reside in the same town, it should be sent, the day or day after its receipt, to an agent or banker to obtain payment of the amount.

15. In calculating *time* in respect of bills and notes, a *month*, where not otherwise expressed, means a *calendar* month; thus a bill drawn at a month, on the first day of a particular month would, but for the days of grace allowed, fall due on the first day of the following month, and if drawn on the 31st of January it would be due on the last day of the next month, or the 28th of February.

When drawn at a certain number of *days*, they are calculated exclusive of the day of the drawing or accepting, and inclusive of that of its falling due.

If a bill is payable a certain time after sight, the time runs from the date of the acceptance; but if a note is so payable, it runs from the presentment for sight.

16. In all cases, however, the time *named*, is not with inland bills nor in most countries with foreign bills, the real time for the *payment;* as the party has, *beyond* that, *three surplus days, or days of grace,* for payment, unless the third be Sunday or a day of public rest, when in this country and some others the second day is the day for payment. Days of grace are allowed notwithstanding the instrument be payable by instalments. In computing the three days of grace, the day on which the instrument *purports* to fall due is *excluded;* thus in the case of a bill drawn at one month on the fourth day of a particular month, it would fall due on the fourth of the next month, and the fifth would be the first day of grace, and the seventh the day of payment.

17. *Foreign Bills* are sometimes drawn at a certain number of *Usances*. An usance varies according to the country; thus, between England and France it is thirty days; half an usance being fifteen days; Madrid and other Spanish as well as

Portuguese towns two months; Venice and Italy three months.

18. Days of grace are allowed in most countries, but they differ in different places. Under the *Codè Napoleon*, there are none in France. In England, Ireland, and Scotland, there are three. In Italy and some other countries their number is not fixed.

19. The following Table of Usances and Days of Grace, has been arranged by the writer from information obtained from various sources. Where the figure against any particular place is not filled in, in the column for Usances, it may be taken for granted that usances are not known or not generally adopted; where the column for Days of Grace is not filled up, either there are none allowed, or they are uncertain or not known.

TABLE OF USANCES BETWEEN ENGLAND AND OTHER COUNTRIES, AND OF DAYS OF GRACE ALLOWED IN DIFFERENT COUNTRIES:—

	Usances. Calendar Months.	Days of Grace.
Amsterdam	1 month	6 days
Aleppo..	1 „	
Antwerp	1 „	6 „
America		3 „
Austria..	1 „	
Berlin	1 „	3 „
Brabant	1 „	

	Usances.	Days of Grace.
Bilboa	2 months	14 days
Bruges	1 „	
Bavaria	1 „	
Brussels	1 „	
Brunswick	1 „	
Brazil		15 „
Cologne	1 „	6 „
Cadiz	2 „	14 „
Carthagena	2 „	14 „
Colonies, the		3 „
Dantzig	1 „	10 „
Dunkirk	30 days	Abolished.
Erfurt	1 month	
Flanders	1 „	
Frankfort	1 „	4 days
France	30 days	Abolished.
Florence	3 months	
Genoa	3 „	30 days
Geneva	1 „	
Germany	1 „	
Gibraltar	2 „	14 „
Gottenberg	75 days	
Hamburg	1 month	12 „
Holland	1 „	
Hague	1 „	
Hungary	1 „	
Hanover	1 „	

	Usances.	Days of Grace.
Italy	3 months	Generally none, or not fixed.
Leghorn	3 "	
Lisbon	2 "	6 days.
Lucca	3 "	
Lisle	30 days	Abolished.
Leipsic	1 month	5 days
Madrid	2 „	14 „
Middleburgh	1 „	6 „
Milan	3 „	Not fixed.
Mecklenberg	1 „	
Moravia	1 „	
Naples	3 „	8 days
Nuremberg	1 „	6 „
Netherlands	1 „	
Oporto	2 „	6 „
Paris	30 days	Abolished.
Portugal	2 months	6 days
Prussia	1 „	
Rotterdam	1 „	6 „
Rouen	30 days	Abolished.
Rome	3 months	15 days
Saint Petersburg		10 on Bills after date. and 3 on Bills after sight.
Stockholm	75 days	12 days
Spain	2 months	14 „
Switzerland	75 days	
Saxony	2 months	
Sardinia	3 „	
Sicily	3 „	
Sweden	75 days	
Trieste	3 months	3 on Bills after date
Tuscany	3 „	

	Usances.	Days of Grace.
Vienna..	1 month	3 on bills after date.
Venice..	3 „	6 days
Wirtemberg..	1 „	
Westphalia..	1 „	
Zealand	1 „	

CHAPTER XIII.

NOTICE OF DISHONOUR AND PROTEST.

1. *Notice of dishonour,* is the notice given by the holder to the other parties, either of the non-acceptance of a bill, where acceptance was not made at the time of drawing, or of the non-payment of a bill or note, when presented to the acceptor or maker for payment.

In case of the dishonour of an *inland bill* by a refusal to accept, or of an inland bill or note by non-payment, *notice of the dishonour* should, as a general rule, be given within a proper and reasonable time by the holder, *to the party from whom he received it, and to all antecedent parties against whom he intends to have recourse for payment.*

Foreign bills when dishonoured, require protesting, as well as notice of dishonour.

2. The following may be used as forms of notice of dishonour, and can be altered according to the circumstances:—

Notice of dishonour of a bill by non-acceptance.

4, Cornhill, London, 4th May, 1850.

Sir,—The bill of exchange for £3,000, dated, &c., drawn by you upon Mr. A. B., and by you endorsed to me, has been presented to A. B. for acceptance, and refused acceptance by him; I therefore demand, and shall look to you for payment.

Yours, &c.,

To C. D., of &c. E. F.

Notice of dishonour of a note by non-payment.

London, 15, Lombard-street,
9th January, 1849.

Sir,—The promissory note, dated November 6th, 1848, for £500, drawn by A. B., payable three months after date to you or your order (as the case may be), and by you indorsed to me, has been presented to A. B. for payment and dishonoured, and now lies here due and unpaid; I therefore demand, and shall look to you for payment.

Yours, &c.,

To E. F., of &c. C. D.

Notice of dishonour of a bill by non-payment.

10, Parliament-street, Westminster,
9th January, 1849.

SIR,—The bill of exchange for £1,000, dated the 5th December, 1848, drawn by you upon, and accepted by A.B., and by you endorsed to me, has been presented to the said A. B., for payment and is dishonoured, and now lies here due and unpaid. I therefore demand, and shall look to you for payment.

Yours, &c.,

To C. D., of, &c. E. F.

3. It is not, however, necessary to use any particular *form*, so that it sufficiently express that the instrument *has been dishonoured*, or words which will have that effect; and although a written notice is usual, and always safest, still a verbal one has been held sufficient; thus, in one case where a dishonoured bill was sent during business hours, by hand, to the place of business of the indorser for the purpose of giving notice of dishonour, but the place was closed and no one was found there, it was held a sufficient notice although no written notice was left or sent.

It was a question at one time, whether it was not absolutely necessary to state, in express terms, that the party giving the notice looked to the party receiving it for payment of the amount; but, according to the authority of Lord Denman, it

is not, he in one case having observed, "It is not necessary to inform the party in *express terms* that he was looked to for payment, the giving of the notice of dishonour is in itself sufficient for the purpose." *Notice of dishonour* is consequently what is required; the mere word, "*dishonoured*" has therefore been held sufficient for the purpose, dishonour embracing two facts—"*presentment*" and "*non-payment.*" Mere notice of a bill remaining *unpaid* will not therefore be sufficient, for that does not necessarily imply that it has been *presented;* but any additional circumstance which could only result *from presentment,* such as a charge for noting, which implies presentment, will make it sufficient.

4. If the party be a banker, merchant, or trader, the notice should be sent to his counting-house or place of business; if a private person, to his dwelling-house: it can be given either through the post or by a private hand, and if there be no post, then by an ordinary and proper conveyance, as the first regular ship, or the like.

In directing the notice, the holder must use due diligence and give the best direction he is able; "Manchester," when the bill was so dated, was held sufficient, the jury however being of opinion, from the circumstances, that the notice had actually come to the hands of the right party; so also when the notice was addressed "London;" but, as a general rule, such directions are *not* sufficient.

5. *The presentment* for payment, as also for acceptance of *inland* bills or notes, is sometimes made personally by the holder, or his clerk or agent, sometimes through a banker, and frequently by a notary; if made by a notary they are usually by him noted for non-payment, and the notice is given by him, but noting an *inland* bill is not actually necessary.

6. *The noting* is a minute made on the instrument of the time and particulars of the presentment; it was *originally* used only for *foreign* bills, and was merely a preliminary step or memorandum for the protest, but it is now the custom for notaries to note *inland* bills, although no protest be intended. As the evidence of the due presentment by the notary, who is a party conversant with such matters, can be conveniently used, the employment of notaries for presentment of inland bills and notes, has been found convenient and useful, particularly to persons not having much knowledge upon the subject, and who do not employ a banker or other party acquainted with it.

7. *By whom and to whom notice must be given.*— The notice should be given by the holder, the object being to inform the party receiving it, that the bill has been dishonoured, and that the holder looks to him for payment. It is the proper course for the holder not only to give notice to his imme-

diate indorser, but to all the antecedent parties to whom he looks for payment, for if he merely gives notice to his immediate indorser, and he or any of the antecedent parties fail to transmit the notice, either altogether or with due promptitude, the parties not duly receiving notice will be discharged; but notice need not be given to any parties, against whom the holder does not intend to look for payment.

8. If, however, the notice be properly circulated or transmitted by the last endorser to the drawer and the antecedent indorsers, they will be liable to the holder, although he has not given them notice, as the other notices given accrue to his benefit; thus, where there are several indorsers and the holder on the day of dishonour, gives notice to the fifth, and the fifth on the following day to the fourth, and so on, each indorser giving notice on the day he receives it to his immediate indorser, till notice reaches the first indorser, and he gives notice to the drawer, the holder may recover against the drawer or any of the indorsers; but as the evidence of notice would be expensive, and perhaps difficult to trace, it is advisable for the holder not to be satisfied with giving notice to his immediate indorser, and the circulation of notice, but to give notice to all the antecedent parties to whom he means to look for payment.

9. When any party not being the holder, as an

indorser, receives from the holder notice of dishonour, he should transmit or give notice to all the parties antecedent to himself; thus, if he be the fifth and last indorser, he should give notice to the drawer and to each of the four antecedent indorsers; the fourth indorser, upon receiving notice, should in like manner, transmit notice to the parties antecedent to him; this should be done for a similar reason to that laid down above, although it is not absolutely necessary, provided notice reach the parties antecedent to the indorser in question, either through the holder direct or by transmission from one to another, inasmuch as notice by a holder, or by an indorser or party either liable to be sued, or entitled, after payment, to sue upon a bill, enures to the benefit of all antecedent or subsequent parties; thus, notice by the holder to the second indorser, or by the fifth or last indorser to the drawer or first indorser, will enure to the benefit of the other parties respectively.

10. *In case of Bankruptcy of the holder*, it may be taken as a general rule, that in all cases of dishonour, where it would have been necessary for the holder to have given notice of dishonour, if he had not become bankrupt, notice must be given by his assignees, which is usually done through the official assignee.

11. *In case of the bankruptcy of the drawer*, or other party who would have been liable if he

had not become bankrupt, notice must be given to him, if before the assignees have been chosen, and after their appointment, to them, which can be done by giving notice to the official assignee.

12. *The Consequence of Neglect* to give notice to any party to whom it should have been given, is the discharging him from all liability—this originated in the principle that if the drawer had had proper notice, he might have had an opportunity of withdrawing his effects from the hands of the acceptor or drawee; the principle also, operates in favor of the indorser, because his remedy against the parties liable to him, is rendered more remote and difficult by not promptly receiving notice.

13. *The want of notice may in some particular instances be excused,* as in the case of an acceptance strictly for accommodation; but it is dangerous to omit the notice, as the holder may have difficulty in proving it an accommodation transaction; again, it has been said that, if the drawer had no effects in the hands of the drawee, either at the time of drawing the bill or of its becoming payable, he cannot set up want of notice as a defence, as he could not have been damnified by it; but it would be otherwise, if he had good reason to expect there were effects; and so, also, if he had given consideration to the acceptor for his acceptance, as the want of notice and delay would prejudice his remedy in recovering against

the acceptor after payment; in *all cases*, therefore, it is clearly advisable to give notice.

14. *The notice* must be given with *promptitude*: if the party to whom it is to be given, resides in the place where presentment was made, it should be given upon the day or the day following the dishonour: if the parties reside elsewhere, it should be given by the *post* of one of such days, or the earliest post afterwards. If the parties both live within the limits of the London district, the notice should be posted in time to be delivered before the expiration of the day following the dishonour.

15. The same time for giving notice is allowed to each subsequent party; thus, if A draws a bill in favour of B, who indorses it to C, and the bill is refused payment on Monday; C has Tuesday to give notice either to A or B, and if he gives notice to B on that day, B has Wednesday to give notice to A.

Sundays, Christmas-days, Good Fridays, and days of public fast, are excluded for the purpose.

16. *A Banker* when employed by his customer, has generally the same time to give notice to his customer as if he the banker, were the actual holder, and the customer has afterwards the same time to give notice to the other parties.

So, if it becomes necessary to employ *an attor-*

ney or other agent to find out the residence of the parties, or otherwise, the attorney or agent has a day afterwards to apprise his clients, and it may, in short, be generally laid down as a rule, that where the difficulty is occasioned by the party, either by his residence not appearing distinctly, or its being unknown or otherwise, anything coming within the scope of *due diligence and promptitude* is sufficient.

17. *With Foreign Bills,* not only notice but *protest* is also necessary, and information of such protest should be sent with the notice.

As to what is a foreign bill the reader is referred to chap. ii., s. 5. In order to protest a foreign bill the notary presents the same a *second time,* and in the event of nonpayment draws up a protest, or declaration, duly stamped, declaring that payment or acceptance had been demanded and refused; and the reasons, if any, assigned for the same. If there be no notary in or near the place where the bill is payable, protest may be made by an inhabitant in the presence of two witnesses, and by 3 and 4 W. IV., c. 70, all Her Majesty's Consuls at foreign ports or places, are empowered to act as notaries.

18. The following is a form of protest:—

On this day the of one thousand eight hundred and , at the request of A. B., the bearer of the Bill of Exchange, whereof a true copy is on the other side written,

I, of Notary Public by royal authority, duly admitted and sworn, went to the House [or Counting-house] of , on whom the said Bill is drawn, and there speaking with the said [or the clerk of the said ,] produced and exhibited to him, the said Bill of Exchange and demanded payment [or acceptance] thereof, to which he answered that *(here state the answer given.)*

Wherefore I the said notary, at the request aforesaid have protested, and by these presents do solemnly protest as well against the drawer of the said bill, as all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interest suffered and to be suffered for want of payment [or acceptance] of the bill. Thus done and protested in the presence of A. B., C. D.

The bill or note is copied verbatim on the fly-sheet.

19. The protest requires stamping according to the amount of the bill or note.

If under £20 ..	2s.
£20 and under 100 ..	3s.
100 „ 500 ..	5s.
500 or upwards ..	10s.
Protest of any other kind	5s.
Progressive duty	5s.

If, however, a stamp cannot conveniently be obtained at the time, the protest can be stamped within six weeks after the date as a matter of course, or within twelve months upon a satisfactory cause for the delay being shewn.

CHAPTER XIV.

PAYMENT OF BILLS AND NOTES, AND RIGHTS AND LIABILITIES OF PARTIES THEREON.

1. Upon a Bill or Note becoming due, payment should be made according to the tenor thereof, by the acceptor or maker, and in default, by the other parties, liable. If the bill or note is payable to the bearer, and transferable by mere *delivery*, payment to any *bonâ fide* holder is good, although the title of the party from whom the holder re-

ceived it, was wrongful; as, where the instrument had been lost or stolen; so payment to the actual thief or finder will be good, if such payment was *bonâ fide,* and the party paying was not guilty of "gross negligence" in not using proper caution before paying.

2. Where it is not payable to Bearer, but transferable by *indorsement* only, payment made to a wrongful holder, who had forged the indorsement, is not a discharge to the party paying, notwithstanding the losing of the bill, may have enabled the party to forge the indorsement, provided the rightful owner was not guilty of fraud or of gross negligence, in not taking proper care of the instrument.

3. If a Bill, transferable by delivery, be lost, the party losing it, cannot recover at law in its absence upon it, or on the consideration, but has his remedy in Equity; and by a recent decision, if the bill be transferable by *indorsement,* the payee cannot recover on the bill without its production.

Some remarks bearing on the above subject will be found in the chapter on "TRANSFER."

4. *The Holder is entitled to obtain payment from any of the parties liable to the payment;* and he may bring distinct and concurrent actions, against all or any of such parties at the same time, but a Judge will, upon application, stay any of the actions, upon payment of the debt and the costs

in the particular action; till that is done, the holder may, after payment of the bill and satisfaction of the debt and costs in one action, proceed and obtain payment of the costs in the other actions.

5. Payment of a bill by the acceptor, or of a note by the maker, operates as an extinguishment of the instrument, they respectively being considered as the principals in the security.

6. Payment at maturity by the drawer, does not extinguish the bill, nor release the acceptor, so that the drawer may after payment, sue the acceptor for the amount, as such payment operates only to the discharge of the drawer's liability, and not the acceptor's, the bill and his liability thereon not being, as has been already observed, finally extinguished till payment by him; but of course, in the case of a mere *accommodation* bill, the acceptor would have a good answer as against the drawer.

7. Payment by the last indorser only releases him, and not any of the antecedent parties, so that after payment, he may recover against the acceptor and the drawer, and his immediate and all the antecedent indorsers.

Payment by an intermediate indorser, releases all the subsequent indorsers, but not the antecedent parties, and after payment, he may recover against

the latter. Payment by the first indorser, releases all subsequent indorsers, but not the acceptor or drawer, against whom he is, after payment entitled to recover.

8. *The amount payable will be the sum mentioned in the Bill, with Interest, if payable.*—If interest *is expressly reserved,* or made payable by the instrument, it runs *from the date* or other time mentioned. Thus, if the bill express to be made payable at a certain time "*with interest,*" or "bearing interest," interest runs from the date. If *no reservation* or mention of interest be made, it will accrue only from the day the principal *is made payable*; and if the instrument be payable *on demand,* then from the time when the demand was made.

The rate of interest generally allowed, where no rate is named, is £5 per cent.; but the allowance of interest in such cases, is, in an action, merely in the nature of damages, given by the jury.

Under the present usury laws, any rate of interest may be received upon a bill or note, provided it has not more than twelve months to run. See also Chapter VII. on "*Consideration.*"

9. *Payment should be made on the day the Instrument becomes due,* and during the hours of business, upon being presented for payment; and if payment be refused, notice of dishonour may be given; but as the acceptor or maker, has the *entire*

day, independent of business hours, within which to pay, although the holder may have been justified in giving the notice of dishonour, upon the original refusal to pay, still if the acceptor afterwards tenders the amount, it must be taken, and the notice of dishonour then falls to the ground.

10. Sometimes a receipt or memorandum of the payment is indorsed on the bill or note; sometimes it is cancelled or destroyed; a receipt can, however, be demanded by the party paying, but if given on the bill, no receipt stamp is necessary.

11. A bill coming to a married woman, vests in her husband; and a bill given in favour of a single woman will, upon her marriage, vest in him, and he is the party to indorse, and to whom payment must be made.

12. Although an infant, cannot make a good bill, still a bill or note made in his favour is good, and it is said he may sue upon and recover payment, but, as a general rule, payment should be made to his guardian.

13. In case of the death of the holder, payment must be made to his personal representatives; the party paying taking care to see the probate or letters of administration.

14. *In case of bankruptcy of the holder*, all bills and notes in the hands of, or belonging to him, or in his order or disposition, pass to and vest in his assignees, as part of his estate and effects, as from the time of the act of bankruptcy, and payment must be made to them; but the interest of the bankrupt must be a *beneficial interest*; and accommodation bills, accepted or made merely for the accommodation of the bankrupt, do not pass, as he himself could not recover upon them.

If there are mutual accounts between the bankrupt and another party, whether arising out of cash or bill transactions, or both, the balance alone will pass to the assignees.

15. Although the property in negotiable instruments vests, as we have seen, in the assignees, as from the time of the *act* of bankruptcy, still payments *bonâ fide* made to a party before the fiat, although after the act of bankruptcy, if without notice of it, are protected by the Act.

16. If a bankrupt, indorse a bill to a creditor, although before the fiat, in anticipation of bankruptcy, and by way of fraudulent preference, the indorsement being void, his assignees can recover payment.

17. *Proof and payment in case of the bankruptcy of the acceptor or party liable.* The holder of a bill

or note accepted or made by, or upon which, the bankrupt, would but for the bankruptcy, have been liable, either as maker, acceptor, or indorser, can prove against the estate for the amount, and, whether the instrument be then due or not; the proof will include interest at £5 per cent., up to the time of the bankruptcy, and if the bill be overdue, the expenses of noting and protest, and commission incurred; and the holder may prove against one party and sue another upon the same bill.

The holder of an accommodation bill cannot, however, prove against the estate of the bankrupt, who made it for his accommodation, as he could not have recovered against the bankrupt himself.

18. A surety, or person who has accepted a bill for the accommodation of the bankrupt, may prove against his estate after paying it; but where there have been mutual accommodation bills with specific exchange of bills, each party is liable to pay his own acceptance, and is not considered in the light of a surety, and, therefore, if one party become bankrupt, the other must take up or give an indemnity, in respect of his own acceptance, before he can prove against the bankrupt's estate in respect of the bankrupt's acceptance; but where the mutual accommodation is without specific exchange, the acceptor is considered as surety for the drawer, and may prove against his estate for the amount.

A creditor who holds bills or notes as *securities*,

proves for the full amount of his debt; but if any part is afterwards paid by other parties liable, the amount is struck out from the proof, and the dividends are payable upon the residue only.

19. The following is a form of proof in bankruptcy; printed forms may be had at a stationer's shop, and filled up according to circumstances:—

In the Court of Bankruptcy.

In the matter of A. B. of, &c., a Bankrupt.

C. D., of &c., Banker, maketh oath and saith that the said A. B., the person against whom a fiat in Bankruptcy hath been lately awarded and issued and is now in prosecution, was, at and before the date and issuing forth of the said fiat and still is, justly and truly indebted to this deponent C. D. (and E. F. and G. H. his partners in trade), in the sum of five hundred pounds upon the undermentioned bill of exchange (or promissory note as the case may be)

for which said sum of five hundred pounds or any part thereof, this deponent saith that he has not (nor have his said partners) nor any person by his (or their) order, or to his deponent's knowledge or belief, for his (or their) use, had or received any manner of satisfaction or security whatsoever, save and except the bill of exchange (or promissory note) hereinafter mentioned.

Note or Bill.	Date.	Drawer.	Acceptor.	Sum.	Payable to.	When and how payable.	Indorsers.

Sworn at
in the City (or County) of
this day of
One thousand eight hundred and fifty.
Before me,

C. D.

Exhibited to
this day of
185 , under a fiat
against .

CHAPTER XV.

RELEASE, DISCHARGE, AND SATISFACTION.

1. We will now consider what other acts or circumstances besides payment may operate as a release or discharge. In considering this subject, it must be borne in mind, that in all cases of bills, the acceptor, as between himself and the other parties, is considered as the principal debtor, and the drawer and indorsers respectively only as sureties liable to pay, if he do not; but as between the other parties, "*inter se*" as the drawer and indorsers, and one indorser and another, each is the principal as concerns the subsequent party, so that a discharge to the acceptor,

releases all parties, but a discharge to the drawer, does not release the acceptor, but only the indorsers; a discharge to the last indorser, does not release the drawer and the prior indorsers, nor does a discharge to an intermediate indorser, release the drawer, or his prior indorsers; but a discharge to an intermediate indorser releases all subsequent indorsers.

In the case of a note, the maker is the principal, and stands in a similar position to the acceptor of a bill; the payee of a note to that of the drawer of the bill; the indorsers stand in the same position as on a bill.

We refer the reader to the last chapter, as to the effect of *payment* as a release, as between the different parties.

2. It may be here observed, that although the taking of a bill or note, does not in itself operate as a release of an existing debt, still, in the case of a simple contract debt, it amounts to an agreement to suspend the creditor's rights and remedies, and to give the debtor credit for the time it has to run; and upon the creditor's receiving the money on the instrument, it then operates as a complete satisfaction of the original debt; so if the creditor be guilty of *laches*, or neglect in dealing with the instrument; but if the debt be a specialty, and not a simple contract debt, the taking of a bill or note, will not operate as a release till payment.

3. *As to what amounts to a Release.*—In some cases, the release will operate in favour only of the party to whom it is given and in others to the discharge of all parties.

If the holder takes a composition from the acceptor, under a creditor's deed and gives him a general release, not only is he discharged, but all other parties; so if he gives the acceptor an agreement or covenant not to sue, *if it be an absolute and binding one;* so *taking a new bill* or higher security from the acceptor discharges the indorsers; but not if *given only as a collateral* security; also, as observed at page 33, the appointment by the holder, of the acceptor as his executor, in law discharges him, and thus, by extinguishing the bill, releases the indorsers.

4. *The Bankruptcy* on the other hand, of the acceptor, being an act of law, does not release the other parties, and the holder may prove under the Bankruptcy, without prejudicing his right to sue them.

The Insolvency of the acceptor, will not operate as a release to the indorsers, nor the obtaining of a judgment which remains unsatisfied, nor the mere *forbearance to sue* the acceptor, unless there is a binding agreement for the purpose, nor the taking of higher security, or a renewal of the bill, if only by way of collateral security; and it is now held, that giving a consent to a Judge's order to stay proceedings, against the acceptor on payment of

debt and costs, at a period when judgment might have been obtained, will not release other parties.

5. A creditor upon any contract, although he releases the party liable as the principal, may, it appears, at the same time and by the same instrument, provide that such release shall be no discharge to the surety, and this is so, notwithstanding by such means the liability of the surety, which was originally only conditional to pay, if the principal did not, is made absolute; therefore if the holder release the acceptor, still if he provide that such release shall not operate as a discharge to the drawer, he can afterwards, it would seem, recover against the drawer; but of course, the release being merely as between the holder and acceptor, the drawer may after payment recover against the acceptor; the above doctrine of limited release is, however, open to some doubt, and it is conceived such a course of proceeding ought not to be acted upon, particularly as the holder, may by forbearing to sue the acceptor, whilst proceeding against the drawer, accomplish what is almost equivalent.

Besides release and discharge by the above means, there may be a variety of other circumstances, or conduct, on the part of the holder, which may operate so as to release the acceptor or different parties, in particular cases.

6. A Bill or Note, may also be released by efflux

of time, under the statute of limitations: as considerable difficulties frequently arise upon this statute, we will give a portion of its provisions.

The third section of the statute (21 Jas. I., c. 16.) enacts "that all actions on the case *(other than such accounts as concern the trade of Merchandize between merchant and merchant, their factors and servants)*, and all actions of debt, grounded on any lending or contract, without specialty, must be brought within *six years* of the cause of such action, and not afterwards," unless there be an acknowledgment of the debt, or a payment on account within six years, as for instance, payment on account of principal or interest; but it gives an additional *six years*, in case of disability of the party entitled to receive.

With respect to the exception in the statute, given in italics, the accounts must be "such accounts as concern the trade of merchandize between merchant and merchant, their factors and agents." When, therefore, but only as between *merchants and traders*, there is a mutual, current, or running account, any item within six years, will take the matter out of the statute. An account *once stated*, and not open and running, is, however, within the statute, and as such, liable to be barred thereby.

7. By the subsequent Act (9 Geo. IV.), it is enacted that no acknowledgment or promise by words *only*, shall take a case out of the statute, but

every such acknowledgment must be *in writing*, and signed by the party chargeable; and it provides, that the rule as to the payment on account of principal or interest, shall remain as before.

The acknowledgment or promise need not expressly name the particular amount, if by reference to other circumstances, it can be ascertained.

8. The Statute also declares, that where there are several joint contractors or parties, one shall not lose the benefit of the statute, through a written acknowledgment signed by the other, but that the creditor shall recover against the person giving the acknowledgment only.

The acknowledgment may be given, either during or after the expiration of the six years, and it need not be personally, to the party actually suing, but it is enough if given or made to a third person or stranger. So, also, a deed, reciting that a certain bill was unpaid, was, in one case, held sufficient *primâ facie* evidence of the fact, to take the case out of the statute.

9. *The Statute begins to run*, from the time when the bill or note fell due, therefore, if it be payable at a specified time, as a certain time after date, the statute would run from that time; if at sight, then, from the time of presentment for sight; so, also, if after demand, which is similar to after sight; but if *on demand*, then, from the date, and not the demand.

10. Evidence of the payment of interest, either verbal or written, is sufficient, but a mere endorsement or memorandum of the receipt of interest by the *holder*, or party receiving it, is not sufficient, unless also signed or acknowledged by the party paying.

Signature by both parties becomes, therefore, advisable, or, where that is not practicable, the holder should insist upon receiving the interest, either always, or at certain intervals, accompanied with a letter identifying it with the bill or note.

11. *In case of Bankruptcy*, if the statute of limitations, would have been a bar as against the bankrupt, his assignees are also barred by it, and the time is computed from the original cause of action, and without reference to the time of the appointment of assignees.

CHAPTER XVI.

REMEDIES UPON BILLS AND NOTES, AND AS TO ENFORCING AND RESISTING PAYMENT. *(a)*

1. } *As to the remedies of the*
2. } *holder.*
3. *As to bringing concurrent actions.*
4. *Against whom he may proceed.*
5. *The amount recoverable and as to interest.*
6. *As to evidence.*
7. *What is necessary to be proved.*
8. *Proofs on action by and against parties in their different characters.*
9. *As to the defence.*

1. The holder of an over-due bill or note, has open to him in the Superior Courts, if the amount justifies his having recourse to them, two remedies, or rather *forms of action*, for recovering payment, one in *debt*, the other in *assumpsit*, the latter being

(*a*) It was not originally the intention of the writer to enter into the questions embraced in this chapter, the same being considered almost exclusively within the province of the professional man, and beyond that of general readers; the extension, however, of the jurisdiction of the County Courts, leads him to the belief, that a short explanation of the method of enforcing payment of bills and notes, may be found useful to his readers, and has induced him to add the present chapter, in which the remarks will be found principally to relate to proceedings in these Courts.

more generally adopted. In the County Courts, however, the different forms of action are dispensed with, and the proceedings simplified by the adoption of a *summons*, which does not state the form of action, but merely the *nature* of the *demand*; but still the rules and principles of law adhered to in the Superior Courts, are of course, in all material respects, and apart from form, followed in the new Inferior Courts.

2. Whether or not it is worth while, for a plaintiff suing upon a bill, to employ a Solicitor in the County Court, as his advocate, will in most cases depend upon the amount sought to be recovered, the difficulties or obstacles which he may have reason to anticipate in his suit, and his own capacity to conduct it himself. It may, however, be observed that, whatever objections or obstacles, apart from mere form, are open to a defendant in the Superior Courts, may be made use of by him in the County Courts; and as the plaintiff is expected to come into Court prepared to prove his case, it may happen that, by his failure through want of evidence or other oversight to do so, the Judge may *nonsuit* him, throwing upon him the costs already incurred and leaving him to begin afresh, a difficulty and expense which might have been avoided by the employment of a professional man.

3. It has been already observed, at page 80,

that the holder may bring separate and concurrent *actions* against all or any of the parties liable on a bill; so, he may bring separate and concurrent plaints in the County Court; but as the Judge would generally, following the practice of the Superior Courts, upon application of the defendant, in any one plaint, stay the proceedings in such plaint, upon payment of the debt and the costs incurred therein, it is not advisable, unless there are particular reasons for so doing, to proceed in the first instance, against more than one party.

4. The reader is referred to the chapters IX. and XIV., on *Transfer* and *Payment*, for more full information, as to the rights and liabilities of the different parties. We will only here observe, that the holder is entitled to proceed against any of the antecedent parties to the bill; thus, a holder or indorsee from a fourth indorser, may proceed against his immediate or fourth indorser, and the three previous indorsers, the drawer and the acceptor. After payment by any intermediate party, such party may go against the parties antecedent but not subsequent to himself, as a third indorser against the first and second indorsers, the drawer and acceptor; so, in like manner, can the drawer proceed against the acceptor, who being considered as the principal or primary debtor, the bill is not extinguished till payment by him; the maker of a note stands in a similar position to the acceptor of a bill, that is,

he is the principal or primary debtor, and the note is not extinguished till payment by him; if, however, the bill is merely an accommodation bill, accepted without consideration, or for the accommodation of the drawer, or a note made for the accommodation of the payee, it is of course otherwise.

5. *The amount* recoverable, besides the costs and expenses, will be the amount of the bill with interest, at the rate reserved, and if no rate be reserved, then at the rate of £5 per cent.

As to the time from which interest accrues, we have already seen, that it depends upon the form of the instrument; thus, if the bill be payable on demand *with interest*, or payable a certain time after date *bearing interest*, it runs from the date; if payable on demand, without mentioning any thing about interest, it runs only from the demand; if payable at sight, from the presentment for sight; if at a certain time after date or after sight, then from the day, when the principal becomes due; it is calculated and allowed up to the time of the payment of the principal.

6. As to the *evidence*, which the plaintiff should be prepared with, it may be here observed, that the system adopted in the County Courts, of allowing both plaintiff and defendant to be examined, will, as a general rule, lessen the difficulty of the proofs, that is, as to the *handwriting* of the

defendant, and probably in some instances, as to the *notice of dishonour*, where necessary, having been given, as the plaintiff, may be able to prove the notice, and frequently also the handwriting of the defendant, or the defendant himself may be put into the box and examined, to prove his own writing, and frequently also the receipt of the notice of dishonour.

It may, however, not unfrequently happen, that the defendant's handwriting, or the notice of dishonour, may be disputed by the defendant, or the defendant may fail to attend, and the plaintiff being unacquainted with his handwriting and unable to prove the notice of dishonour, may perhaps be nonsuited for want of proper evidence; it being sometimes the practice of the judge, notwithstanding the default of the defendant to attend, to require the plaintiff to prove his case to his satisfaction, and not to give judgment merely on defendant's default, although he may, if he thinks proper and sometimes does, adjourn the case, for defendant's attendance and further evidence; the necessity, therefore, for the plaintiff to come prepared with proper evidence, will depend upon the particular circumstances of the case.

7. It may be further observed, that as a general rule, the *signature* of a party liable on a bill or note, is an admission of the making or the drawing and accepting of it, as the case may be, and of the signatures of the maker or drawer and acceptor,

or of any indorsements prior to the party liable; for instance, the acceptor of a bill and the payee or first indorser of a note (who then stands as to his liability to the holder, in a similar position to an acceptor) admits by his signature, the due drawing of the bill or making of the note, and the signature of the drawer or maker, as the case may be; the first indorser of a bill admits the drawing and accepting; the second indorser of a note (who stands in a similar position to the first indorser of a bill) admits the making of the note and the indorsement to him, by the payee or first indorser; and every subsequent indorser, admits the making, drawing, or accepting, as the case may be, and all indorsements antecedent to his own; therefore where the holder is suing the party, from whom he received the instrument, the signature of the *defendant* will be the only one necessary to be proved.

As the acceptor of a bill or the maker of a note is, as we have seen, the party primarily liable, the other parties being considered merely in the nature of sureties, the bill must, in order to fix the liability of any of the other parties, but not the acceptor or maker, have been duly presented to the acceptor or maker, and notice of dishonour given to the other parties, as pointed out in preceding chapters, and which will also have to be proved.

8. It therefore follows, that in a proceeding by the payee, against the acceptor of a bill or

the maker of a note, the signature of the acceptor or maker must be proved; but the presentment and notice of dishonour need, never be proved, against the acceptor or maker; some evidence identifying the defendant may also sometimes be required.

In an action by the original or first indorsee, against the maker or acceptor, the plaintiff must prove the making or accepting, as the case may be, but not the drawing, if a bill, as the acceptance admits the drawing; if he is not the original indorsee, he must shew his title and the devolution of the instrument to him, by proving the indorsement to him and any intermediate indorsements, there being in this case no admission on the part of the *maker* or *acceptor*, of the signatures of the indorsers, who are subsequent parties; if, however, the instrument be payable to bearer, or indorsed in blank, there will, of course, be no indorsements to prove, the possession being sufficient.

In proceedings by an indorsee, against his indorser, the plaintiff must prove, first the signature of the indorser to him, which admits the signature of every antecedent party, then the due presentment and dishonour and notice of dishonour; if against one, who is not the immediate indorser to the plaintiff, the devolution of title or intermediate indorsements must also be proved.

If by indorsee against drawer of a bill, or against payee who has become first indorser of a note,

proof must be given of the signature of such drawer or payee, then the devolution of title to the plaintiff, by proving the indorsements, there being no admission thereof by the drawer or payee, who are prior parties, then the presentment to and dishonour by the acceptor or maker, as the case may be, and notice thereof to defendant.

If by drawer of a bill against acceptor, or by payee of a note against maker, he need only prove, the signature and identity of the defendant, and not the presentment or dishonour.

9. If there be any *defence*, set up to plaintiffs claim, the defendant should go into Court prepared to prove it. The line of defence may be Payment, Release, Want of Notice of Dishonour, that no consideration was given for the instrument, or a variety of other causes, as to which the reader is referred to different portions of this work.

It has been, however, already observed, that *prima facie*, a good consideration is always assumed in the plaintiff's favour, until the contrary is proved by the defendant, upon whom the onus lies, of shewing, that no consideration was given or that the consideration was illegal. Under the system of pleading in the Superior Courts, such a defence, must have been specially pleaded by the defendant, and the plaintiff would therefore, by having notice of it, go into Court prepared to rebut it; so in the

County Courts, the defendant should give the plaintiff notice of such defence, or any special defence intended to be set up.

In the absence, however, of any notice or intimation to the plaintiff, that any such special defence will be set up, it is not generally, absolutely necessary, that the plaintiff should be prepared, on the first hearing of a plaint, to meet such defence, by proving the consideration, or by otherwise rebutting the defendant's case, inasmuch as the Judge would adjourn the case to enable him to do so.

In meeting the defence, the question will frequently arise, as to whether, the plaintiff stands in immediate position to the defendant, or is a third party or *bonâ fide* holder, and accordingly entitled or not, to recover; upon these points, it is sufficient to refer the reader to the chapters on "*Consideration*" and "*Transfer*;" and to the different portions of the work, bearing upon the particular subject, as to any other question or point, which may arise in the course of the proceedings.

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